IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 10842 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE M.S.SHAH
and
HONOURABLE MR.JUSTICE H.B.ANTANI

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

UKABHAI JIVABHAI KANJARIA - Petitioner(s)
Versus
STATE OF GUJARAT & 3 - Respondent(s)

==========

Appearance :
MR VC VAGHELA for Petitioner(s) : 1,
MS TRUSHA PATEL ASST. GOVERNMENT PLEADER for Respondent(s) : 1,
None for Respondent(s) : 2 - 4.

==========

CORAM : HONOURABLE MR.JUSTICE M.S.SHAH

and

HONOURABLE MR.JUSTICE H.B.ANTANI

Date : 25/04/2007
ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE M.S.SHAH)

Rule returnable forthwith. Ms Trusha Patel, learned AGP appears and waives service of Rule for all the respondents under instructions of Mr AC Pathan on behalf of the State of

Gujarat and Mr SN Joshi -respondent No.3. In the facts and circumstances of the case, the petition is taken up for final disposal today.

2. Elections to APMC Bhatia, Dist. Jamnagar were declared as per the election notification at Annexure-C on 29.1.2007. The relevant portion of the election program was as under:-

Date of publication of final voters' list	19.3.2007
Date of submitting nomination forms	20.4.2007
Publication of preliminary list of nomination forms	21.4.2007
Date of scrutiny of nomination forms	21.4.2007
Last date of withdrawing nomination forms	24.4.2007
Date of publication of final list of candidates	24.4.2007
Date of polling	07/05/07
Date of counting	08/05/07

3. As per the provisions of Section 11(1) of the Gujarat Agricultural Produce Markets Act, 1963, every market committee shall consist of the following members, namely :-

(i) eight agriculturists who shall be elected by members of managing committees of co-operative societies (other than co-operative marketing societies and milk produce co-operative societies) dispensing agricultural credit in the market area;

(ii) four members to be elected in the prescribed manner from amongst themselves by the traders holding general licences;

(iii) two representatives of the co-operative marketing societies situated in the market area and holding general licences, to be elected from amongst the members (other than nominal, associate or sympathiser members) of such societies by the members of the managing committees of such societies.

Provided that where the number of co-operative marketing societies situate does not exceed two, only one representative shall be so elected;

(iv) and (v) .... (to be nominated as per the provisions of the Act).

There is no dispute about the fact that within the area of APMC Bhatia there are only two co-operative marketing societies and, therefore, only one representative is to be elected from the constituency No.(iii).

4. Ukabhai Jivabhai Kanjaria (petitioner), Vankar Divaben Lavjibhai and Ranchhodbhai Jivabhai Kanjaria all of whom are members of Kisan Agricultural Produce Conversion Co-operative Society, Bhatia submitted their nomination forms on the stipulated date. However, on the date of scrutiny i.e. on 21.4.2007, respondent No.3 herein – Election Officer and District Registrar, Co-operative Societies, Jamnagar rejected the nomination forms of all the three candidates on the ground that the co-operative marketing society of which the candidates are members has not

passed any resolution nominating them for the purpose of contesting the elections. The said order dated 21.4.2007 at Annexure-A is under challenge in this petition under Article 226 of the Constitution.

5. Mr Vaghela, learned advocate for the petitioner has stated that with the rejection of these three nomination forms not a single candidate has remained in the field and there will be no representation for constituency No.(iii). On merits, it is submitted that the statutory provisions do not require any nomination to be made by any co-operative marketing society and that it is open to any member of a co-operative marketing society within the area of the concerned APMC to contest elections as a candidate for constituency No.(iii). It is further submitted that it is for the members of the managing committees of the co-operative marketing societies in the area to elect two representatives (where the number of co-operative marketing societies in the APMC area is more than two) or to elect one representative (where the number of co-operative marketing societies in the APMC area does not exceed two). It is further submitted that wherever the Legislature or the rule making authority intended to provide that the concerned co-operative society should make a nomination, such provision is expressly made. For instance, for elections to specified co-operative societies, under Rule 18 of the Gujarat Specified Co-operative Societies Elections to Committees Rules, 1982 it is specifically provided that where a society sends the candidate to stand at election, such society shall pass a resolution in its managing committee authorizing such candidature and the nomination form of such candidate shall be accompanied by a certified copy of such resolution.

6. On the other hand, Ms Trusha Patel, learned AGP has opposed the petition and submitted that as per the settled legal

position, this Court would not interfere with the election process and it is open to the petitioner to challenge the impugned order dated 21.4.2007 in an election petition under Rule 28 of the APMC Rules, 1965.

7. The impugned order proceeds on the basis that the candidate must have been nominated by any of the co-operative marketing societies situate in the market area. This stand is sought to be justified on the basis of the opening words of clause (iii) of sub-section (1) of Section 11. The submission, however, overlooks the scheme of election provided in Section 11(1) of the Act. Just as eight agriculturists are to be elected by members of the managing committees of co-operative societies dispensing agricultural credit in the market area without any candidate from the said constituency being required to be nominated by the managing committee of a co-operative society dispensing agricultural credit in the market area, similarly any member of a co-operative marketing society situate in the market area and holding general licences is entitled to file his nomination form and the election is to be made by the members of the managing committees of such societies.

8. The learned advocate for the petitioner is on firm ground in invoking the provisions of Rule 18 of the Gujarat Specified Co-operative Societies Elections to Committees Rules, 1982 that where a society sends the candidate to stand at election, such society shall pass a resolution in its managing committee authorizing such candidature the rule making authority has specifically made such provision. Rule 18 of the said Rules reads as under:-

> "18. Nomination of candidates. - (1) Any person may be nominated a a candidate for election to fill a seat, if he is qualified to be chosen to fill that seat under the provisions of the Act, rules and bye-laws and his name is entered in the list of voters;
>
> Provided that were a society sends the candidate to stand at election, such society shall pass a resolution in its managing committee authorizing such candidature and the nomination form of such candidate shall be accompanied by a certified copy of such resolution. "

No such provision is found in the APMC Act, 1963 and the APMC Rules, 1965.

It is thus clear that to be a candidate for constituency No.(iii), all that is required is that a candidate should be a member of any co-operative marketing society situate in the marketing area holding general licence and that he need not be nominated by a co-operative marketing society or its managing committee. Of course such election is to be made by the members of the managing committees of the co-operative marketing societies in the area.

9. In **Election Commission of India vs. Ashok kumar, (2000) 8 SCC 216**, the Apex Court has laid down the following principles in paragraphs 28 and 32 of the judgment :-

> "28. Election disputes are not just private civil disputes between two parties. Though there is an individual or a few individuals arrayed as parties before the Court but the stakes of the constituency as a whole are on trial. Whichever way the lis terminates it affects the fate of the constituency and the citizens generally. A conscientious approach with overriding consideration for welfare of the constituency and strengthening the democracy is called for. Neither turning a blind eye to the controversies which have arisen nor assuming a role of overenthusiastic activist would do. The two extremes have to be avoided in dealing with election disputes.

32. For convenience sake we would now generally sum up our conclusions by partly restating what the two Constitution Benches have already said and then adding by clarifying what follows therefrom in view of the analysis made by us hereinabove :-

1) If an election, (the term 'election' being widely interpreted so as to include all steps and entire proceedings commencing from the date of notification of election till the date of declaration of result) is to be called in question and which questioning may have the effect of interrupting, obstructing or protracting the election proceedings in any manner, the invoking of judicial remedy has to be postponed till after the completing of proceedings in elections.

2) Any decision sought and rendered will not amount to "calling in question an election" if it subserves the progress of the election and facilitates the completion of the election. Anything done towards completing or in furtherance of the election proceedings cannot be described as questioning the election.

3) Subject to the above, the action taken or orders issued by Election Commission are open to judicial review on the well-settled parameters which enable judicial review of decisions of statutory bodies such as on a case of mala fide or arbitrary exercise of power being made out or the statutory body being shown to have acted in breach of law.

4) Without interrupting, obstructing or delaying the progress of the election proceedings, judicial intervention is available if assistance of the Court has been sought for merely to correct or smoothen the progress of the election proceedings, to remove the obstacles therein, or to preserve a vital piece of evidence if the same would be lost or destroyed or rendered irretrievable by the time the results are declared and stage is set for invoking the jurisdiction of the Court.

5) The Court must be very circumspect and act with caution while entertaining any election dispute though not hit by the bar of Article 329(b) but brought to it during the pendency of election proceedings. The Court must guard against any attempt at retarding, interrupting, protracting or stalling of the election proceedings. Care has to be taken to see that there is no attempt to utilise the Court's indulgence by filing a petition outwardly innocuous but essentially a subterfuge or pretext for achieving an ulterior or hidden end. Needless to say that in the very nature of the things the Court would act with reluctance and shall not act except on a clear and strong

> case for its intervention having been made out by raising the pleas with particulars and precision and supporting the same by necessary material."
>
> (emphasis supplied)

10. It is clear from the above decision that judicial intervention will not amount to "calling in question an election" if it subserves the progress of the election and facilitates the completion of the election. Anything done towards completing or in furtherance of the election proceedings cannot be described as questioning the election. It is also held that where the statutory authority has acted in breach of law, without interrupting, obstructing or delaying the progress of the election proceedings, judicial intervention is available if assistance of the Court has been sought for merely to correct or smoothen the progress of the election proceedings, to remove the obstacles therein. The Court must guard against any attempt at retarding, interrupting, protracting or staling of the election proceedings.

11. In the facts of the present case, the statute specifically provides for election of one representative of the co-operative marketing societies situate in the market area and holding general licences, to be elected from amongst the members of such societies by the members of the managing committees of such societies. The impugned order of the Election Officer is manifestly in breach of statutory law has prevented holding of elections to the said constituency No.(iii) and it is possible to correct the said defect and if judicial intervention can subserve the progress of election and facilitates the completion of the election for constituency No.(iii), there would be no bar to such judicial intervention. In fact, if impugned order of respondent No.3 is allowed to stand, there will be no election to constituency No.(iii) from which one representative is to be elected from amongst the members of the two co-operative marketing societies situate within th area of

APMC Bhatia by the members of the managing committees of the said two co-operative marketing societies.

12. For the foregoing reasons, we hold that the impugned order dated 21.4.2007 at Annexure-A to the petition was clearly contrary to the statutory provisions. If the said order is allowed to stand, the object of the relevant statutory provisions being clause (iii) of sub-section (1) of Section 11 will be defeated. Hence by judicial intervention, we merely propose to correct the defect and provide for completing the election process for constituency No. (iii).

13. We may also record that after receiving the impugned order dated 21.4.2007 on 22.4.2007, the petitioner filed this petition on 24.4.2007 and requested for urgent circulation. The permission was granted by this Court, but on account of constraints of time and pre-occupation with two part-heard matters relating to contracts where the question of supply of drinking water to about 200 villages was involved, the Court could not take up this matter yesterday. Since in order to correct the defect and to complete the election for constituency No. (iii), nothing further is required to be done except publication of the final list of candidates and giving opportunity to the candidates to withdraw from the list and the date of polling is 7.5.2007, we see no impediment in granting the relief.

14. We may also note the submission coming from Mr Vaghela for the petitioner that there were only three candidates who had submitted their nomination forms for constituency No.(iii) and that by the impugned order, the nomination forms of all the three candidates have been rejected and that it was an understanding between the three candidates that the petitioner will be allowed to contest the elections and that other two will withdraw

their candidature and that one of the remaining two candidates is brother of the petitioner. However, since these two candidates are not before us, while quashing and setting aside the impugned order dated 21.4.2007 at Annexure-A to the petition as illegal and void, we propose to issue appropriate directions.

O R D E R

15. The petition is accordingly allowed in the following terms :-

(1) The impugned order dated 21.4.2007 at Annexure-A is quashed and set aside as illegal and void-ab-initio;

(2) The Election Officer shall not treat the nomination forms of Ukabhai Jivabhai Kanjaria (petitioner), Vankar Divaben Lavjibhai and Ranchhodbhai Jivabhai Kanjaria for constituency No. (iii) as invalid;

(3) The Election Officer shall permit the candidates for constituency No. (iii) to withdraw nomination forms by 27.4.2007 by 5-00 PM and immediately thereafter publish the final list of candidates for constituency No. (iii) on the same date;

(4) It is clarified that 07.05.2007 as the date of polling for constituency No. (iii) shall remain undisturbed and so also 08.05.2007 as the date of counting and declaring results shall remain undisturbed.

16. Rule is accordingly made absolute in the above terms with no order as to costs.

17. This order is pronounced in the presence of respondent No.3-Election Officer and the learned AGP and a copy of the operative order shall be supplied to them today.

(M.S. SHAH, J.)

(H.B. ANTANI, J.)

zgs/-

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 10842 of 2007

==========

UKABHAI JIVABHAI KANJARIA - Petitioner(s)
Versus
STATE OF GUJARAT & 3 - Respondent(s)

==========

Appearance :
MR VC VAGHELA for Petitioner(s) : 1,
MS TRUSHA PATEL ASST. GOVERNMENT PLEADER for Respondent(s) : 1,
None for Respondent(s) : 2 - 4.

==========

CORAM : HONOURABLE MR.JUSTICE M.S.SHAH

and

HONOURABLE MR.JUSTICE H.B.ANTANI

Date : 25/04/2007
OPERATIVE ORDER

(Per : HONOURABLE MR.JUSTICE M.S.SHAH)

The petition is accordingly allowed in the following terms :-

(1) The impugned order dated 21.4.2007 at Annexure-A is quashed and set aside as illegal and void-ab-initio;

(2) The Election Officer shall not treat the nomination forms of Ukabhai Jivabhai Kanjaria (petitioner), Vankar Divaben Lavjibhai and Ranchhodbhai Jivabhai Kanjaria for constituency No. (iii) as invalid;

(3) The Election Officer shall permit the candidates for constituency No. (iii) to withdraw nomination forms by 27.4.2007 by 5-00 PM and immediately thereafter publish the final list of candidates for constituency No. (iii) on the same date;

(4) It is clarified that 07.05.2007 as the date of polling for

constituency No. (iii) shall remain undisturbed and so also 08.05.2007 as the date of counting and declaring results shall remain undisturbed.

Rule is accordingly made absolute in the above terms with no order as to costs.

This order is pronounced in the presence of respondent No.3-Election Officer and the learned AGP and a copy of the operative order shall be supplied to them today.

(M.S. SHAH, J.)

(H.B. ANTANI, J.)

zgs/-